MISCELLANY.

"Board" Includes Lodging.—"As commonly used, the word 'board' menans lodging as well as food. Century Dictionary; Heron *v.* Webber, 103 Me. 178, 68 Atl. 744." Castleberry *v.* Tyler Commercial College (Tex.), 217 S. W. 1112.

Interference in Affairs of Foreign States.—The attitude of Mr. Davis, the American Ambassador, in declining to accede to the request of the Lord Mayor of Dublin that he should intervene on behalf of political prisoners in Dublin, is unquestionably correct and in accordance with the elementary principles of international morality by which one state is precluded from interference in the internal affairs of another state, since such interference would constitute an infraction of the rights involved in independence. Professor Lawrence defines independence as "the right of a state to manage all its affairs, whether external or internal, without control from other states." The right of independence has been laid down by Mr. W. E. Hall, "in its largest extent, as a right possessed by a state to exercise its will, without interference on the part of foreign states, in all matters and upon all occasions, with reference to which it acts as an independent community." The Lord Chancellor, in commenting on these definitions, describes by anticipation the position of Great Britian as an independent state, and therefore absolutely unaffected by influences from without in the management of her own affairs: "Both these definitions and descriptions are of a general character and may require to be strictly modified in practice, but the essential conception is familiar and therefore readily grasped. An independent state is entitled to live its own life in its own way, the sole judge within the law of its domestic government and its foreign policy. The particular form of government which it has chosen in the working out of its national destiny concerns itself and itself alone, for every independent state has the right of setting its own house in order." Phillimore in his summary of the rights incident to independence places at the head of the list of these rights the right to a free choice, settlement, and alterations of the internal constitution and government without the intermeddling of any foreign state. The American ambassador in his attitude of absolute aloofness and abstinence from all attempts to influence the executive government of this country in matters relating exclusively to itself is acting in accordance with the best traditions of diplomacy and the doctrines propounded and rigorously maintained by the government of the United States in relation to situations created by interference, whether designed or otherwise, by foreign ambassadors in American internal affairs.—Law Notes.

Res Ipsa Loquitur.—In Courtney *v.* Gainsborough Studios, 174 N. Y. S. 860, the court said: "The maxim 'res ipsa loquitur'—literally translated 'The thing speaks for itself'—means merely that where an accident occurs through some agency or instrumentality under the control of a defendant, and the plaintiff is injured, in the absence of explanation by defendant, the occurrence itself furnishes prima facie evidence of want of care on defendant's part, which caused the accident."

Trousers as Vehicle.—The press report of the arrest of a Chicago banker for carrying a bottle of liquor in the manner which once was conventional, viz., in his hip pocket, arouses of itself no interest other than a mild curiosity as to where he got it. The report proceeds, however, to raise a question of law which is delicate or otherwise according to the point of view. Does this use of the pocket make the trousers of the Chicago man a "vehicle" subject to condemnation and sale because used for the transportation of liquor in violatior of law. It is needless to say that precedent is wholly lacking. In U. S. *v.* One Automobile, 237 Fed. 891, an automobile was held not to be within the law because such a vehicle was unknown when the statute was passed and could not therefore be deemed to have been within the legislative contemplation. But no comfort can be extracted from that decision, since trousers (and the carrying of liquid refreshment in the hip pocket thereof) have been known to Congress since the earliest days of the republic. Even the members of the present Congress are reliably reported to wear them, though a doubt is suggested by the recent prohibition legislation. On principle the argument for condemnation seems sound. Liqor, however great its intrinsic potency, is not automotive. "Liquor cannot be brought from without a point within this state nor carried from point to point within the state without the use of some vehicle or conveyance." Mack *v.* Westbrook, 98 S. E. 339. Of course the accepted meaning of "vehicle" will have to be strained somewhat to bring in those nether garments, but what's the dictionary between prohibitionists? For instance, a loan of liquor, to be returned in kind, is a "sale" thereof. Leach *v.* State, 53 S. W. 630. The importance of the question does not depend wholly on the fate of this particular pair of trousers, though trousers fit to adorn the legs of a Chicago banker are no trifle these days. But once this contention is granted does it not afford a sure basis for the claim that the offending garment is of itself inert and without power to convey anything, that it is like the body of an automobile and by that analogy requires the condemnation also of the propelling power, the graceless legs which bore this load of sin down the chaste streets of Chicago, the abandoned heart which ceased not its beating at the spectacle of such infamy,

the vile brain in which rose the motor impulse? That would be a real triumph for prohibition. Let these hip pocket malefactors be condemned and sold to the highest bidder, the proceeds to be used of course for the hire of more "federal agents."—Law Notes.

Undue Influence—Adulterous Intercourse.—"There can be no doubt that a long continued relation of adulterous intercourse is a source of great mutual influence of each of the parties over the mind and person and property of the other. As is said in the case of Smith *v.* Henline, 174 Ill. 184, 51 N. E. 227: 'The existence of an illicit relationship between a deceased testator and his mistress will not give rise to a presumption of undue influence as a matter of law. But undue influence is more readily inferred in the case of a will made in favor of a mistress than in the case of a will made in favor of a wife The existence of the relation is a strong circumstance to be considered by the jury along with other facts in the case.'" Alford *v.* Johnson (Ark.), 146 S. W. 516, 519.

Must We Recognize a New Privilege in The Law of Evidence?—It is axiomatic in our law that the public has a right to every man's evidence.[1] To this principle the law of privileged communications forms an important exception. There is to-day no privilege for confidential communications, merely as such.[2] But communications made in the course of a few specific relationships have been recognized as privileged from disclosure. In each the law accords the privilege purely on grounds of policy, because it considers that greater social mischief would probably result from requiring the disclosure of such communications than from refusing to insist upon it.[3] To outweigh the undeniable social mischief of impeded justice, some relation, which it is imperative that the law should foster and to the existence of which a privilege of silence is essential, must stand endangered.[4] Obviously the number of such relationships is strictly limited.

The case of Lindsey *v.* People[5] suggests the inquiry: should com-

1. See 4 Wigmore on Evidence, quoting Lord Hardwicke, § 2192.

2. Dean Wigmore tells us that in early English trials the obligation of honor among gentlemen, in regard to matters revealed to them in confidence, seems to have been recognized as an excuse for maintaining silence. See 4 Wigmore on Evidence, § 2286. But a sterner view of the necessities of justice prevailed. "It is not befitting the dignity of this High Court," wrote Lord Campden in 1776, "to be debating the etiquette of honor at the same time when we are trying lives and liberties." Duchess of Kingston's Case, 20 How. St. Tr. 586. See also 1 Greenleaf on Evidence, 16 ed., § 248.

3. See 1 Greenleaf of Evidence, 16 ed., § 236.

4. For Dean Wigmore's analysis of the four elements which must be present if the test of social expediency is to be satisfied, see 4 Wigmore on Evidence, § 2285.

5. 181 Pac. 531 (1919).

monlaw reasoning extend to an hitherto unknown relationship, that of juvenile-court judge and child delinquent, this privilege of silence? The facts were these: A twelve-year-old boy confessed in strict confidence his part in the murder of his father to the juvenile-court judge of his district. Thereupon deliquency proceedings were instituted against him. At the trial of the boy's mother for the murder, he testified in her favor. To impeach this testimony the judge was asked to divulge the boy's confession, and was adjudged in contempt and fined on refusing to do so upon order of court. From that judgment he appealed. It appears that the boy consented to the judge's testifying. The Supreme Court of Colorado, three judges dissenting, held the confession not to have been a privileged communication; and the adjudgment in contempt was affirmed.[6]

There seems to be afloat in our law a somewhat ill-defined doctrine that judges, as such, have a testimonial privilege.[7] Whether this is law may be questioned.[8] Some jurisdictions deny it in toto.[9] Many merely allude to it *obiter*.[10] At most, on the authorities, it probably nowhere extends beyond according to judges of courts of record a privilege not to be compelled to state what had occurred in court in a case there on trial before them.[11] Moreover, this doctrine is one of personal privilege rather than of privilege based upon a relationship, and rests at best upon principles of very limited application.[12] From

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6. Whether or not the decision should be supported in view of the Colorado Statute as to privileged communications, is beyond the scope of the present inquiry. The act provides: "Fifth, a public officer shall not be examined as to communications made to him in official confidence, when the public interest, in the judgment of the court, would suffer by the disclosure." See Rev. Stat. of Colo. 1908, § 7274, paragraph 5.

7. Declaration of Grievances, 1 Cobbett's Parl. Hist. 1206; Regina *v.* Gazzard, 8 C. & P. 595 (1838); People *v.* Pratt, 133 Mich. 125, 131, 94 N. W. 752, 754 (1903); Hale *v.* Wyatt, 98 Atl. (N. H.) 379 (1916).

8. "If such privilege exist it has been honored by breach rather than observance." Parsons, C. J., in White Mt. Freezer Co. *v.* Murphy, 101 Atl. (N. H.) 357, 360 (1917).

9. Lindsey *v.* People, 181 Pac. (Colo.) 531, 536 (1919).

10. Welcome *v.* Batchelder, 23 Me. 85 (1843); People *v.* Pratt, 133 Mich. 125, 137, 94 N. W. 752, 757 (1903); White Mt. Freezer Co. *v.* Murphy, 101 Atl. (N. H.) 357, 360 (1917); Hale *v.* Wyatt, 98 Atl. (N. H.) 379 (1916).

11. Knowles' Trial, 12 How. St. Tr. 1179 ff. (1697); Regina *v.* Gazzard, 8 C. & P. 595 (1838); Regina *v.* Harvey, 8 Cox Cr. 99, 103 (1858). See 1 Greenleaf on Evidence, 16 ed., § 254 c; 4 Wigmore on Evidence, § 2372 (3).

12. Dean Wigmore would seem to suggest that judges of superior courts are exempted from attendance in court on the same theory of personal privilege which relieves the chief executive from the duty of appearing as a witness. See 4 Wigmore on Evidence, § 2372 (3). The language of the cases, however, appears rather to reflect a feeling that it is improper to expose a judge to criticism of his judgment by compelling him to testify as to facts which were presented to him in

both points of view, then, it is of little help in solving the problem before the Colorado court.[13]

But is there not a new social relationship involved which calls for a true relational privilege? It is submitted that there is. Three analogies suggest themselves. The privilege of husband and wife is accorded because that relationship, the family, is perhaps more jealously safeguarded than any other in our law, and is one to which complete confidence is a *sine qua non*.[14] The privilege of attorney and client rests upon the needs of the law itself. In a system as technical and intricate as the common law the legal profession is essential, not only for actual litigation, but for the orderly conduct of everyday affairs; and only the most complete frankness, impossible but for insured secrecy, makes the work of the lawyer possible.[15] The privilege of informer and public official has a similar basis in social expediency. The administration of criminal justice would suffer immeasurably were freedom from disclosure not accorded informers.[16] Consider the privilege now contended for. The jurisdiction of the juvenile court is not criminal, it is that of the English Court of Chancery, enlarged.[17] The discretionary powers of the judge are enormous. The relation sought to be created is one of guardianship, with a view to uplifting and benefiting the child by state help in those instances where parental direction has proved inadequate or vicious.[18] It is the social background behind the delinquent child that the juvenile-court judge primarily seeks to reach.[19] It seems clear that the relation is one in which trust and confidence on the part of the child, complete freedom from fear of disclosure, are prerequisites to any hope of success.[20] Further,

court and upon which he presumably based his decision. Under either view, no principle appplicable to the principal case seems involved.

13. A feeling that the privilege contended for was allied to that of a judge in regard to a case on trial before him appears to be what led the majority of the court to emphasize their denial that "instantaneous jurisdiction" over the boy could have been acquired by his mere confession. Though jurisdiction in the technical sense may not have been acquired, nevertheless a guardianship relation, worthy of protection, may have thereby in fact come into existence. As to which

14. See 4 Wigmore on Evidence, § 2336, and cases there quoted

15. See *idem*, § 2291, and cases there quoted.

16. Worthington *v.* Scribner, 109 Mass. 487; Home *v.* Bentinck, 2 B. & B. 130 (1820); Beatstone *v.* Skene, 5 H. & N. 838 (1860). See 4 Wigmore on Evidence, § 2374; also cases collected in § 2374, note 1, and § 2375, note 1.

17. Laws of Colorado, 1908, chap. 158; Lindsey *v.* People, 181 Pac. 531, 537 (1919). See Flexner and Baldwin, Juvenile Courts and Probation, p. 7.

18. *Cf.* State *v.* Scholl, 167 Wis. 504, 508, 167 N. W. 830, 831 (1918); Lindsay *v.* Lindsay, 257 Ill. 328, 100 N. E. 892 (1913).

19. See Juvenile Courts and Probation, *supra*, p. 5.

20. For a full description of juvenile court procedure, see *idem*, Parts I and II. For a collection of juvenile court statutes, see H. H. Hart. Juvenile Court Laws of the United States.

no legal reform of to-day promises greater social benefits for the future. The relationship should be, and is, of vital interest to the law itself. In that essential it is similar to those relationships already considered, for the protection of which the law has accorded a privilege of silence; in that essential it differs from such relationships as penitent and priest, to the maintenance of which secrecy is also of the highest importance, but from which the law has withheld the privilege because they do not fall sufficiently within the scope of the law's utilitarian aims and aspirations.[21]

If it be admitted that common-law reasoning requires that a privilege be predicated on the new judge, child delinquent relationship, should this privilege include such a confession as that in Lindsey *v.* People? It would seem, with all deference to the *dictum* in that case, that it should. True, formal delinquency proceedings had not as yet been instituted, but it seems clear that the boy voluntarily appealed to the judge in the latter's official capacity. His purpose was to invoke the jurisdiction of the court; and he was thereupon taken in charge as a delinquent child. The relationship to be protected existed in fact; and the privilege should have attached. In the case of attorney and client,[22] and probably in that of physician and patient when privileged by statute,[23] the courts go even further. It would seem the accepted view, in order fully to achieve the purpose of the privilege, that preliminary communications made as overtures, before the professional relation has actually been consummated, are protected.[24]

A single inquiry, but one of extreme delicacy, remains. Assuming that the privilege existed, whose was it? More specifically, who might assert it, and who waive it? The first point is of academic interest only, since on the facts the boy had waived the privilege, provided it was his to waive.[25] But was it? It is submitted with hesitancy that it

21. See 4 Wigmore on Evidence, § 2394, and cases cited in note 4. In White Mt. Freezer Co. *v.* Murphy, 101 Atl. (N. H.) 357 (1917), the court refused to recognize as privileged communications made to a labor commissioner during a trade dispute. The ground, however, was largely that secrecy was not essential to the relationship.

22. People *v.* Pratt, 133 Mich. 125, 94 N. W. 752 (1903); Peek *v.* Boone, 90 Ga. 767, 17 S. E. 66 (1892); Crisler *v.* Garland, 11 Sm. & M. (Miss.) 136 (1848); Cross *v.* Riggins, 50 Mo. 335 (1872). *Contra,* Theisen *v.* Dayton, 82 Iowa, 74, 47 N. W. 891 (1891); Heaton *v.* Findlay, 12 Pa. St. 304 (1849). See 4 Wigmore on Evidence, § 2304.

23. See 4 Wigmore on Evidence, § 2382.

24. Moreover, it should be noted that the statute creating the Juvenile Court aims to secure informal procedure. To attempt to delimit the relationship by lines based on legal forms rather than on *de facto* existence would seem at variance with the spirit of the institution to be protected. See Revised Stat. of Colorado, 1908, §§ 586, 1590, 1607; Laws of Colo. (1909) chap. 199; and Laws of Colo. (1913) chap. 51.

25. If there has been no waiver, it is submitted that though the party whose privilege it is be absent, the other party to the relationship should be entitled to assert the privilege in the owner's behalf.

was not. It would seem, it is true, that normally the person for whose protection the privilege is accorded should have exclusive power to waive it. Such is the law in the case of lawyer and client;[26] of physician and patient.[27] In that of informers, however, the previlege is conceded to be waivable by, and only by, the public official, the recipient of the information.[28] The distinction, like the privilege itself, is based on practical expediency. Informers are not to be trusted as sole arbiters of their own privilege. Though for a very different reason, are not twelve-year-old children, for whose protectection and care the whole juvenile-court system is planned, less fitted to be repositories of the power to waive the protecting privilege than is the juvenile-court judge? It is the very essence of that system to impose upon him a guardianship over them. Is he not better qualified than they to judge of the necessity for disclosure that may arise because of an impending perversion of justice if the disclosure be not made? And surely it cannot be maintained that serious danger would result from intrusting this additional exercise of discretion to a man already occupying a post of such enormous trust.—Harvard Law Review.

Injunctions to Restrain Foreign Proceedings.—It is clear that a court of equity has jurisdiction to restrain a party from proceeding further with a foreign suit, since the decree operates on the person of the defendant and is not directed against the foreign court itself.[1] But while there is no direct interference with the functioning of the other tribunal, still considerations of interstate harmony and of proper respect due to another court competent to adjudicate the controversy, make the exercise of this jurisdiction a very delicate matter. Formerly, with the English and some American courts, these considerations controlled, and they refrained scrupulously from entertaining such jurisdiction in all cases.[2] Since then, courts have not hesitated to make free use of their power to enjoin, deeming it no violation of the principles of comity to interfere in cases, where to do otherwise would lead to grossly inequitable results. Instances are numerous, however, where interposition was a clear abuse of discretion, and where the foreign court, left unhampered, could have reached, in the end, a more desirable conclusion.

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26. See Wigmore on Evidence, § 2321.

27. See *idem*, § 2386.

28. Worthington *v.* Scribner, 109 Mass. 487 (1872), and cases collected therein.

1. Portarlington *v.* Soulby, 3 Myl. & K. 104 (1834); Dehon *v.* Foster, 4 Allen (Mass.), 545 (1861); Cole *v.* Cunningham, 133 U. S. 107 (1889). In the last case it was held that an injunction of a foreign proceeding does not violate any provisions of the Federal Constitution.

2. See Lowe *v.* Baker, 2 Freem. 125 (1677); Mead *v.* Merritt 2 Paige (N. Y.), 402 (1831); Harris *v.* Pullman, 84 Ill. 20 (1876).

Practically all courts are agreed to-day that a multiplicity of suits, if vexatious,—and such is true in most instances—presents a fair case for the exercise of the Chancellor's discretion.[3] Consequently the defendant is required either to elect the forum most advantageous to his cause,[4] or to pursue his remedy only in the jurisdiction where he first instituted proceeding.[5] No one, it seems, can quarrel with the results in these cases; the defendant's conduct is clearly inequitable in putting the complainant to the expense and annoyance of defending several suits, and restricting him to a single action assures him sufficiently of the justice he seeks. The case is not so clear, however, where the action abroad is the only one pending, and this the complainant claims is vexatious. Mere additional expense and trouble in defending the suit should not warrant interference, since a party is not constrained to sue where it is most convenient for his opponent. He is entitled to any procedural advantage he can secure, and the court should not deny him the privilege unless he exercises it in a manner so unconscientious as to outweigh all other considerations. In the much-discussed case of Kempson *v.* Kempson,[6] the court granted an injunction, and properly so, since the facts disclosed not only hardship but also fraudulent conduct. In a recent Kentucky case, however, the injunction seems totally unwarranted, since it appears that the defense of the action abroad only occasioned slight additional expense and that the defendant sought only a more favorable forum.[7] Where the foreign suit is brought solely to harass the complainant, as after a complete adjudication of the matter in the home state, it is clear that it should be enjoined.[8]

Again, it is laid down as a general rule that foreign actions in evasion of the domestic law will be enjoined.[9] A citizen of a state often garnishes the wages of a fellow citizen in a sister state or attaches his property temporarily there, and brings suit solely to evade the do-

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3. See Ames, Cases on Equity Jurisdiction, 28, note.

4. White *v.* Caxton Bookbinding Co., 10 Civ. Pro. (N. Y.) 146 (1886).

5. Monumental Saving Assoc. *v.* Fentress, 125 Fed. 812 (1903); Old Dominion Copper, etc., Co. *v.* Bigelow, 203 Mass. 159, 89 N. E. 193 (1909); Home Ins. Co. *v.* Howell, 24 N. J. Eq. 238 (1874). See also 26 Harv. L. Rev. 347.

6. 58 N. J. Eq. 94, 43 Atl. 97 (1899), where the husband of the complainant brought a suit for divorce in North Dakota, invoking the jurisdiction of the court by a fraudulent allegation of his residence in that state. See 15 Harv. L. Rev. 145.

7. Reed's Admr. *v.* Ill. Cent. R. R. Co., 206 S. W. (Ky.) 795 (1919).

8. O'Haire *v.* Burns, 45 Colo. 432, 101 Pac. 755 (1909). It is true that the complainant could plead *res judicata* as a complete defense to the foreign action, but it would be unfair to require him to inour hardship in the defense of a purely vexatious suit.

9. Miller *v.* Gittings, 85 Md. 601, 37 Atl. 372 (1897); Sandage *v.* Studabaker, 142 Ind. 148, 41 N. E. 380 (1895); Ames, Cases on Equity Jurisdiction, 28, note.

mestic exemption laws. It is almost universally held, and with sufficient reason, that the suit may be restrained.[10] The local legislature, by statute, has outlined a strong policy of the state in assuring a citizen and his family of fair physical subsistence. To allow another citizen to defeat that policy by resorting to a mere procedural device is something that should not be countenanced by the courts of that state. Of course, this reasoning does not apply when a foreign creditor sues, even though the court can render an effective decree, since the creditor is under no duty to uphold the policy of any state other than his own.[11] Suits in evasion of the state insolvency laws have also been generally enjoined.[12] Here the state is interested in providing adequate machinery whereby an insolvent's property may be ratably apportioned among all his creditors. A single creditor, by attaching the debtor's property outside of the jurisdiction not only evades the operation of the statute and interferes with the insolvency proceedings, but seeks to gain for himself a highly inequitable advantage over the other creditors. The court therefore should entertain no scruples in restraining further action abroad. But whether there is just cause for such a decree before insolvency proceedings have been begun is doubtful, since the machinery of the statute has not yet been put into operation.[13] The whole question, however, has been of diminished importance since the passage of the Federal Bankruptcy Act; and to-day it will perhaps arise only in cases where the debtor's property is situated outside of the United States.

Protection of state policy, alone, justifies the injunction granted in the above class of cases. No such justification, nor any other, exists for enjoining suits brought merely in evasion of some common-law rule of remedial or of even substantive right. The state cannot properly be said to have a vital interest in having litigation between its citizens determined solely by the common law of the state. Mere disparity of remedies or difference of substantive law is an insufficient consideration for interfering with a case before a court which, it must be assumed, will make just disposition of the controversy. The balance of convenience is against enjoining, since there is no inequity in the defendant's merely seeking a more favorable forum. Some courts, however, are not in accord with this view and treat these cases no differently from those discussed above. Thus, a tort suit in Georgia was enjoined by an Alabama court on the ground that the Georgia

10. Wierse *v.* Thomas, 145 N. C. 261, 59 S. E. 58 (1907); Keyser *v.* Rice, 47 Md. 203 (1877); Snook *v.* Snetzer, 25 Ohio St. 516 (1886); Allen *v.* Buchanan, 97 Ala. 399, 11 So. 777 (1892).

11. See Moor *v.* Anglo-Italian Bank, 10 Ch. D. 681 (1879); Reynolds *v.* Adden, 136 U. S. 348 (1889); Barry *v.* Mut. L. Ins. Co., 2 Thomp. & C. (N. Y.) 15 (1873).

12. Cole *v.* Cunningham, *supra;* Dehon *v.* Foster, *supra;* Sercomb *v.* Catlin, 128 Ill. 556, 21 N. E. 606 (1889).

13. See Cunningham *v.* Foster, 142 Mass. 47 (1886).

court would refuse to apply the Alabama rule relative to contributory negligence and thereby deprive the complainant of a defense to which he was entitled.[14] In another case, the court improperly enjoined an action when it did not even appear that the defense of failure of consideration could not be set up as well before the foreign tribunal.[15] A recent case goes even further. In Culp *v.* Butler[16] an Illinois action was enjoined by the Indiana court, because the defense of the Statute of Limitations, which the complainant could plead in Indiana, would not avail him in Illnois.[17] The court obviously confuses barring the right with barring the remedy; the substantive right still subsists, but the domestic court simply refuses a remedy thereon. It is therefore difficult to perceive why the application to a forum that *will* grant the defendant a remedy constitutes an evasion of the home law, for admittedly there is a good cause of action. An Illinois decision is directly opposed to that of the principal case on the exact point discussed above,[18] and on the general principle involved, the rule in this class of cases should be that only suits prosecuted to evade a strong domestic policy should be restrained.—Harvard Law Review.

Fees of Lawyers.—What is the biggest fee ever paid a lawyer? There is nothing certain about it, but it is the opinion of some of Boston's most widely known lawyers that Robert M. Morse has received the largest fee ever paid to a Boston lawyer. In the famous Wentworth will case of a dozen or so years ago he is reputed to have been paid $250,000, while on the opposing side Samuel J. Elder and John D. Long are generally credited with having added $100,000 each to their bank accounts.

Another big fee is one awarded by the courts of Massachusetts to

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14. Weaver *v.* Ala. G. S. R. Co., 76 So. (Ala.) 364 (1917).

15. Sandage *v.* Studabaker, *supra.* See also Dinsmore *v.* Neresheimer, 32 Hun (N. Y.), 204 (1882).

16. 122 N. E. (Ind.) 684 (1919).

17. It is difficult to see how the facts in the case raised the question of law upon which the court bases its decision. Presumably the defendant brought his action, before the Statute of Limitations had run in either state. The complainant wanted until the limitation period had run in Indiana and then filed his bill there to enjoin. Clearly, under no view was there an attempt to evade the Indiana law.

18. Thorndike *v.* Thorndike, 142 Ill. 450, 32 N. E. 510 (1892).

weight of authority is also against it.[19] It is submitted, that the true

19. Edgell *v.* Clarke, 19 App. Div. 199, 45 N. Y. Supp. 979; Bigelow *v.* Old Dominion, etc. Co., 47 N. J. Eq. 457, 71 Atl. 153 (1908); Carson *v.* Dunham 149 Mass. 521, 20 N. E. 312 (1889); Illinois Life Ins. Co. *v.* Prentiss, 277 Ill. 383, 115 N. E. 554 (1917); Am. Exp. Co. *v.* Fox, 187 S. W. (Tenn.) 1118 (1916); Federal Trust Co. *v.* Conklin, 87 N. J. Eq. 185, 99 Atl. 109 (1916); Wade *v.* Crump, 173 S. W. (Texas) 538 (1915).

Sherman L. Whipple in the Bay State Gas Company receivership case, in which Mr. Whipple got $233,000, although he said it did not all go to him.

There is a tremendous difference between the fees which lawyers receive today and those which the legal lights of a generation ago were paid.

Daniel Webster is as good an illustration of this as any one, and Samuel J. Elder is authority for the statement that Webster's best year netted him only $18,000. "I have seen Webster's books," Mr. Elder said, "and there was not a year that he earned more than $18,000, usually much less." It has often been said that the great senator from Massachusetts did not average $10,000 a year, and yet today a man with his attainments and eminence who did not earn half a million dollars a year would have only himself to blame.

Rufus Choate, a very great lawyer in his day, practiced more than Webster. His average receipts from 1849 to 1859, inclusive, were nearly $18,000 yearly. The largest receipts in a single year during that period were a little more than $22,000 in 1856 and the smallest $11,000. His largest single fee was $2,000, and he had four more of the same amount. Once he had a retaining fee of $1,500. Choate was probably the equal in eloquence and learning of any lawyer living today.

Lincoln a member of the Illinois bar, was another whose low charges have caused comment. Prior to 1840 he received two or three fees of $50 each. Trial fees were usually entered as $5. He sometimes took payment in trade.

The largest fee he ever received was $5,000 from the Illinois Central Railroad, the richest corporation in his state, and he had to sue to collect that. Today he would get $50,000 or $100,000 for the same work.

Coming down to our present day, it is said that the late James B. Dill received $1,000,000 for his services in connection with the forming of the United States steel trust.

William D. Guthrie received $800,000 for his work in breaking the will of Henry B. Plant.—*New Jersey Law Journal.*

Living Language.—In De Ganay *v.* Lederer, 239 Fed. 572, the court said: "Human language is a living thing, and not an unyielding mummy cloth in which thoughts are enwrapped."

Broad-Minded.—A lawyer is not so narrow-minded as it might seem for he always admits that there are two sides to every case—his side and the wrong side.

A Cat in a Strange Garrett.—Who would ever dream of poetry emanating from a grand jury room? Nevertheless, we are indebted to His Honor therein named, for the following grand jury report:

Friday evening:
To the Honorable J. W. Knowles,
Who as presiding Judge controls
The District Court of Number Ten,
In the good old State of Oregon.

Your Jury, designated Grand,
For Union County's happy land,
Once more appears before the Court
To make the following report:

We have examined well and true
The work that we were called to do,
All cases wherein at this time
Had the appearance of a crime.

Indictment bills returned as true,
Are twelve, with nothing else in view
We wish to thank Attorney Hodgin,
The State for paying board and lodgin.

Your Honor for your courtesy,
On whose good judgment, all agree.
And now our business is through,
The next move, Judge, is up to you.

M. L. CARTER,
Foreman of the Grand Jury.

Law Notes

Unofficial Opinions.—In Phœnix Cotton Oil Co. *v.* Royal Indemnity Co., 205 S. W. 128, the Supreme Court of Tennessee said in referring to a case cited by counsel: "The opinion was not ordered published in our reports. It remained, therefore, under the rule of this court, only the opinion of the judge who filed it, and valuable merely for its reasoning, although the judgment rendered in the case was the judgment of the whole court.

"The court does not encourage the citing of the unpublished opinions of its members, and never refers to them unless compelled to do so by a reference of counsel thereto."

Robes for Judges.—Interest in the wearing of robes by judges in the United States is stimulated by the recent adoption of the practice in the Supreme Court of Virginia. The objection to the robing of judges was well stated in a recent communication to LAW NOTES by a former federal judge for Porto Rico, who condemned the practice as undemocratic and added that "if a judge (at least in a nisi prius court) cannot command the respect of the people and the bar without robing himself like a church dignitary he should resign and seek some calling he is fitted for." It would seem, however, that this viewpoint loses sight of the value of the symbol as an aid to understanding. The judge in the discharge of his duties is more than a respectable lawyer sitting on a high bench. He is the representative of public law and public justice. It may be noted in passing that the bench which has become the synonym of judicial office is itself a symbol of authority. A table on the level of a court room floor would serve the utilitarian purpose as well. A great deal of the prevalent disrespect for law is due to the inability of many to realize that the laws of a republic possess at least equal sanctity with those proclaimed by imperial authority. That realization can come only by distinguishing between the man and the officer, a distinction which the unreflective mind will not readily make without being assisted hereto by some "outward and visible sign" of authority. The crown of the king, the robes of the priest, the distinctive badge of the head of a fraternal order are not the outgrowth of a mere love of display: they represent an innate recognition of the eternal fitness of an outward appearance which shall be suggestive of the inward fact. Tradition has power, as any man who has ever attended a long established college knows, and those indicia around which may gather a worthy tradition are no mean factors in human life. Robes are not essential to a judge any more than a flag is essential to a nation, but the one tends as surely to arouse respect for the judicial office as the other does to arouse patriotic fervor. Not only have judicial robes a tendency to inspire popular respect, but their reflex effort on the wearer is not negligible. It is a well known fact that men often rise under the responsibility of public station to levels which their private lives did not manifest. The man would be more than usually callous who could don a judicial robe without being thereby admonished of the responsibility of public service of which it was the badge.—Law Notes.

A Vast Difference—In Fidelity Lumber Co. *v.* Howell, 206 S. W. 947, 950 the Court of Civil Appeals of Texas said: "We think that there is, in legal contemplation, a *vast* difference between a person merely insane and one whose life is extinct."